

REMARKS

Claims 1 - 10 are pending in the present application. Reconsideration of the application is respectfully requested.

Applicant notes with appreciation that the Examiner indicates that claims 2 - 5 and 7 - 10 would be allowable if rewritten in independent form. However, Applicant believes that all of the claims are currently in condition for allowance and, therefore, placing the aforementioned claims into independent form does not appear to be necessary.

In section 2 of the Office Action, claims 1 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,617,238 to Bogdan et al. (hereinafter "the Bogdan et al. patent"). Applicant is traversing this rejection.

Claim 1 provides for an apparatus. the apparatus includes, *inter alia*, a laser controller coupled to a controllable laser transmitter for adjusting the extinction ratio of the controllable laser transmitter to provide relatively high test BER values.

The Bogdan et al. patent mentions adding a correction factor to a receiver sensitivity measurement made using a first extinction ratio, to determine a value of receiver sensitivity corresponding to a second extinction ratio (col. 12, lines 54 - 58). However, this disclosure by the Bogdan et al. patent is not a disclosure of adjusting the extinction ratio ... to provide relatively high test BER values, as recited in claim 1.

Moreover, the Bogdan et al. patent teaches adjusting power level to obtain a particular BER (col. 25, line 54), and thus teaches away from adjusting the extinction ratio ... to provide relatively high test BER values, as recited in claim 1.

For these reasons, Applicant submits that claim 1 is both novel and non-obvious over the Bogdan et al. patent.

Claim 6 provides for a method that includes, *inter alia*, adjusting an extinction ratio of a laser transmitter to produce relatively high measured BER values. Thus, claim 6 includes a recital similar to that of claim 1, as discussed above. Accordingly, claim 6, for reasoning similar to that provided in support of claim 1, is both novel and non-obvious over the Bogdan et al. patent.

Applicant respectfully requests reconsideration and withdrawal of the section 102(e) rejection of claims 1 and 6.

In view of the foregoing, Applicant respectfully submits that all claims presented in this application patentably distinguish over the prior art. Accordingly, Applicant respectfully requests favorable consideration and that this application be passed to allowance.

Respectfully submitted,



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